IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

CRP.No. 1065 of 2007()

EP 2228/04 in OS.259/2002 of II ADDL.M.C.,THRISSUR
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REVN. PETITIONER: JUDGEMENT DEBTOR NO.1

SHAJAHAN, S/O MEERA HUSSAIN,
KALLUPARAMBIL, KUNNATHUMKARA DESOM,
OLLUKKARA VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.JIJO PAUL

RESPONDENT: DECREE HOLDER

VISRUTHA KURIES AND LOANS LTD.,
POOTHOLE, THRISSUR.

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

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C.R.P.No.1065 of 2007

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Dated this the 5th day of December, 2007.

ORDER

This revision petition is preferred against the order of the IInd Additional Munsiff, Thrissur in E.P.No.2228 of 2004 in O.S.No.259 of 2002. The Execution Petition is one for arrest of the judgment debtors for their willful evasion of payment in spite of means. The court found that there is no evidence with regard to the income of judgment debtors 2 and 4, but found that the first respondent after the decree had transferred the property for Rs.90,000/- and therefore, there is means. It is submitted by the counsel for the writ petitioner that it is true that the property has been sold, but it was for the purpose of treating the mother, who was laid up with cancer and the entire amount has been exhausted for the treatment. When an application is filed under Proviso a(ii) of Section 51 of C.P.C. means has to be proved. If it comes under Proviso a(i) of Section 51 of C.P.C., it operates on a different field. Then the dishonesty or bad faith is

to be pleaded and proved. If there is dishonest arrest can be ordered. When it is under Proviso a(ii) of Section 51 of C.P.C. and the judgment debtor deposes before the court that he is not having any means in order to arrest him, the court should be satisfied with the means. Therefore I find that the finding of the court below regarding means is not proper and it requires reconsideration.

2. Therefore the order under challenge is set aside and the matter is remitted back to the court below for fresh consideration and the court shall consider the matter afresh after giving equal opportunities to both sides. Since I am disposing of the matter at the admission stage itself, the court shall give notice to the decree holder as well, fix a convenient date for the parties and dispose of the matter in accordance with law.

Civil Revision Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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